

**TOWN OF NEEDHAM
BOARD OF HEALTH
REGULATIONS UPDATED FEBRUARY 4, 2014**

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**TOWN OF NEEDHAM
BOARD OF HEALTH**

The Board of Health of the Town of Needham, County of Norfolk, Massachusetts, acting under the authority of Chapter 111, Section 31 of the Massachusetts General Laws, Tercentenary Edition and Amendments and Additions thereto, hereby makes the following addition to the Board of Health Regulations in the interest of and for the preservation of the public health.

ARTICLE I

**REGULATION AFFECTING SMOKING AND THE
SALE AND DISTRIBUTION OF TOBACCO AND
NICOTINE DELIVERY PRODUCTS IN NEEDHAM**

SECTION 1.1 AUTHORITY

This regulation is promulgated under the authority granted to the Needham Board of Health under Massachusetts General Laws Chapter 111, Section 31 "boards of health may make reasonable health regulations."

SECTION 1.2 RATIONALE/PURPOSE

Whereas conclusive evidence exists that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and whereas the harmful effects of tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and whereas environmental tobacco smoke [hereinafter ETS], which includes both exhaled smoke and the side stream smoke from burning tobacco products, causes the death of 53,000 Americans each year (McGinnis JM, Forge W, "Actual Causes of Death in the United States", JAMA 1993 270:2207-2212); and whereas the Ninth Report on Carcinogens of the Public Health Service's National Toxicology Program classified secondhand smoke as a known human carcinogen (U.S. DHHS, 2000) and the International Agency for Research on Cancer (IARC) of the World Health Organization also classified secondhand smoke as a known human carcinogen (IARC-WHO, 2002); now, therefore, the Board of Health of the town of Needham recognizes the right of those who wish to breathe smokefree air and establishes this regulation to protect and improve the public health and welfare by prohibiting smoking in public places and workplaces.

Whereas more than eighty percent of all smokers begin smoking before the age of eighteen years (Centers for Disease Control and Prevention, "Youth Surveillance - United States 2000," 50 MMWR 1 (Nov. 2000); and whereas nationally in 2000, sixty nine percent of middle school age children who smoke at least once a month were not asked to show proof of age when purchasing cigarettes (Id.); and whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem.

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single "dose;" enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth (CDC, 2009); and according to the CDC's youth risk behavior surveillance system (2010), the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.9% in 2009; and in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history (*Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009*, Commonwealth of Massachusetts); research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4% (*Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*, Ringel, Wasserman & Andreyeva, 2005); and nicotine levels in cigars are generally much higher than nicotine levels in cigarettes (*Cigar Smoking and Cancer*, National Institute of Health, NCI, 2010).

Whereas, tobacco and Nicotine Delivery Products is currently sold in health care facilities such as pharmacies and drug stores and the sale of tobacco products and Nicotine Delivery Products is incompatible with the mission of health care facilities because it is detrimental to the public health and undermines efforts to educate patients on the safe and effective use of medication.

Whereas, educational institutions in the Town of Needham may also sell tobacco products and Nicotine Delivery Products to the younger population, which is particularly at risk for becoming smokers and the sale of tobacco products and Nicotine Delivery Products is also incompatible with the mission of educational institutions which educate the younger population about social, environmental and health risks and harms.

Whereas, there are certain tobacco products such as blunts that are frequently marketed and sold to the youth and are also known to be used as drug paraphernalia.

Now, therefore it is the intention of the town of Needham Board of Health to curtail the

access to tobacco products and Nicotine Delivery Products by Needham youth.

SECTION 1.3 DEFINITIONS As used in this regulation:

Adjacent: Contiguous or adjoining.

Blunt Wrap: A product comprised wholly or in part of tobacco that is manufactured as a wrap or a hollow tube designed to be filled by the consumer with loose tobacco or other fillers and then combusted and inhaled.

Board: the Board of Health of the Town of Needham.

Business agent: an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: any individual who performs services for an employer in return for wages or profit and any person who volunteers his or her services for an employer.

Employer: any individual, firm, partnership, association, corporation, trust, or other business entity or organization of any kind, including the Town of Needham or any agency thereof, which utilizes the services of one (1) or more individual employees.

Educational Institution: any public or private college, normal school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Enclosed area: a space bounded by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms and halls.

Entity: any single individual, group of individuals, corporation, partnership, institution, employer, association, firm or any other legal entity whether public or private.

Health Care Facility: any office or institution providing care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including, but not limited to, rehabilitation hospitals or other clinics, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist, pharmacies, drug stores, any entity subject to licensing by the Massachusetts Department of Public Health under M.G.L. c. 112 and all specialists within these professions.

Indoor Sports Arena: any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar recreational facility where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Minor: an individual who is under the age of eighteen.

Municipal Building: any building or enclosed facility owned, operated, rented, leased or occupied by the Town of Needham, including school buildings and school grounds.

Municipal Vehicle: any vehicle owned, rented, leased or operated by the Town of Needham, including without limitation, cars, trucks and buses.

Nicotine Delivery Product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Non-smoking Area: any area that is designated and posted by the proprietor or person in charge as a place where smoking by patrons, employees, visitors or others is prohibited and

where smoke and smoking by-products are not permitted.

Permit Holder: any person engaged in the sale or distribution of tobacco products directly to consumers who applies for and receives a Tobacco Sales and Nicotine Delivery Product Sales Permit or any person who is required to apply for a Tobacco Sales and Nicotine Delivery Sales Permit pursuant to these regulations, or his or her business agent.

Person: an individual, firm, partnership, association, corporation, trust, company, other business entity, or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, restaurant, or retail store, or the business agents or designees of any of the foregoing.

Private Club: any not-for-profit establishment created and organized pursuant to M.G.L. Chapter 180 as a charitable corporation with a defined membership. A private club is not a place of public accommodation but rather is distinctly private. Criteria used to determine whether a club is distinctly private include, but are not limited to, those factors identified in 204 CMR 10.02. If the private club holds an alcoholic beverage license, said license shall be a “club license” or a “war veterans club license” as defined in M.G.L. Ch. 138, §12 and by the Massachusetts Alcohol Beverage Control Commission. Said license is subject to the terms set forth by the local licensing authority.

Public Place: any building or facility owned, leased, rented, operated or occupied by the Town of Needham, including school buildings and grounds; any area open to the general public, including but not limited to restaurants, bar areas of restaurants, bars, auditoriums, licensed child care locations and other child care facilities, schools and school property, public and private educational facilities, clinics, hospitals, health care facilities, nursing homes, long-term care facilities, public libraries, municipal buildings, museums, theaters, retail stores, laundromats, hair cutting establishments, salons, massage and body art establishments, retail food establishment, fast food or take-out food facilities, indoor sports arenas, public transit facilities, enclosed shopping malls, common areas in privately owned buildings, common areas in public access buildings, any clubs, rooms or halls when open to the public or when used for public meetings, all areas available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys’ offices and other offices, banks, hotels and motels, stairwells, hallways, entranceways, waiting areas, lobbies, public rest rooms, and elevators accessible to the public.

Public Transportation: buses, taxis, and other means of transportation available to the general public while such means of transportation is operating within the boundaries of the town including indoor platforms by which such means of transportation may be accessed.

Restaurant: any coffee shop, cafeteria, workplace cafeteria, sandwich stand, private and public school cafeteria, and other eating establishment that gives or offers food for sale to the public, guests, or employees for on-premises consumption. This includes all food service establishments licensed by the Board of Health, including catering facilities, but does not include private clubs or fraternal organizations when either are closed to the public.

Retail Food Establishment: any establishment commonly known as a supermarket, grocery store, bakery, or convenience store in which the primary activity is the sale of food items to the public for off-premises consumption. This includes any “take-out” food service establishment and all other food service establishments not included in the definition of a restaurant.

Retail Store: any retail service establishment whose primary purpose is to sell or offer for sale to consumers any goods, wares, merchandise, articles, other things or services. “Retail store” shall include retail food stores but shall not include restaurants as defined herein.

Retail Tobacco Store: An establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Needham Board of Health.

Self Service Display: any display from which customers may select a tobacco product without assistance from an employee or store personnel, excluding vending machines.

Smoking: the inhaling, exhaling, burning, holding or carrying of any lighted cigar, cigarette, pipe, or other lighted tobacco product in any form or other tobacco products or non-tobacco products designed to be combusted and inhaled.

Smoking bar: An establishment that is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco product: any product in any form containing tobacco, including, but not limited to, cigarettes, chewing tobacco, snuff, dip, cigars, pipe tobacco, blunt wraps and bidis.

Tobacco Vending Machine: any automated or mechanical self-service device or machine which, upon insertion of money, tokens, swipe cards, slugs or any other form of payment, dispenses cigarettes or any other tobacco product.

Town: the Town of Needham, Massachusetts.

Workplace: Any enclosed area of a structure or portion thereof at which one (1) or more employees perform services for their employer (including the personal residence of the employer during those hours when used as a place of employment). It also includes motor vehicles, employee lounges, restrooms, conference rooms, hallways, stairways and entrance ways, as well as exterior, unenclosed spaces at stairs, ramps, landings, patios, porches, decks, adjacent yards, loading docks and other areas within twenty (20) feet of the entrance doors or other areas where smoke would migrate into the enclosed area of a structure.

SECTION 1.4 PROHIBITION ON SMOKING IN PUBLIC PLACES AND WORKPLACES

No person shall smoke or use an e-cigarette nor shall any person having control of the premises upon which smoking is prohibited by this regulation or by M.G.L. c. 270, §22, or the business agent or designee of such person, permit a person to smoke or use an e-cigarette in any of the following places as defined herein: restaurants, health care facilities, municipal buildings, municipal vehicles, public places, public transportation, retail stores, any establishment that is required to possess a valid Tobacco Sales and Nicotine Delivery Products Permit from the Needham Board of Health (including, but not limited to, smoke shops, tobacconists, retail tobacco stores) and workplaces except as otherwise provided in Section 1.4.2 of this regulation. Additionally, no person shall smoke in any place in which a sign conforming to the requirements of Section 1.4.1 of this regulation is posted. No person shall remove a sign posted under the authority Section 1.4.1 of this regulation.

1.4.1 Posting Notice of Prohibitions

Every person having control of premises upon which smoking is prohibited by and under the authority of this regulation shall conspicuously display upon the premises "No Smoking" signs provided by the Massachusetts Department of Public Health and available from the Needham Board of Health or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) and comparable in size to the sign provided by the Massachusetts Department of Public Health and available from the Needham Board of Health.

1.4.2 Exclusions

Notwithstanding any other provision of these regulations, smoking may be permitted in the following places and/or under the following circumstances consistent with all applicable state laws:

(a) Private residences except those portions used as a public place, food service establishment, child care, adult care, or health care office during the hours when operating as such;

(b) Hotel, motel, inn and bed and breakfast rooms rented to guests are smoke free (100%) at all times. A room so designated shall have signs posted indicating that no smoking is allowed.

(c) Private clubs if all employees are members. When a private club is open to the general public, that portion of said establishment open to the general public must be smokefree, separately enclosed and shall have self-closing doors. Premises occupied by a membership association, if the premises is owned, or under a written lease for a term of not less than 90 consecutive days, by an association during the time of the permitted activity if the premises are not located in a public building. Smoking may be permitted in a distinct part of the premises of a membership association, provided that this part (a) is physically separated from any area open to the public or occupied by a non-member who is not a guest. The separation shall be sufficient to prevent any migration of smoke into the public areas. Any doors separating the areas shall be self-closing; (b) is occupied solely by those persons specified in 105 CMR 661.100(b). The membership association shall adopt and effectively implement a policy that ensures only such persons are permitted to enter the part of the premises where smoking is permitted; and (c) there are no signs inviting or encouraging the public or non-members who are not guests to enter. No smoking shall be permitted in an enclosed indoor space of a membership association during the time the space is:

- a. open to the public. A membership association shall be regarded as open to the public when it has signs or advertising inviting or encouraging non-members to the premises or takes other action that may reasonably be regarded as inviting or allowing non-members to enter the premises.; or**
- b. occupied by a non-member who is not an invited guest of a member or an employee of the association. A non-member shall be regarded as a guest if entering the premises (a) accompanied by a member, provided the member remains on the premises while the guest is present, and (b) signing a guest register that clearly specifies the name and address of the guest and the inviting member;**
- c. rented from the association for a fee or other agreement that compensates the association for the use of such space; OR**

- d. occupied by a contract employee, temporary employee or independent contractor.
- (i) Smoking may be permitted in an enclosed indoor space of a membership association at all times, if the space is restricted by the association to admittance only of its members, the invited guest of a member, and the employees of the membership association. A person shall not be regarded as a member if entering the premises under terms of a membership that differ in duration, cost or privileges from the terms of a full membership in the association. A person who is a contract employee, temporary employee, or independent contractor shall be considered an employee of a membership association under this subsection,. A person who is a member of an affiliated chapter or branch of a membership association that is fraternal in nature operating under the lodge system, and is visiting the affiliated association, shall be an invited guest for the purpose of this association.

Nothing shall prohibit an establishment from being completely smokefree.

SECTION 1.5 SMOKING BARS

Smoking bars are prohibited in the Town of Needham.

SECTION 1.6 RETAIL SALE OF TOBACCO PRODUCTS

1.6.1 As of April 1, 2005, no person shall sell tobacco products or Nicotine Delivery Products or permit tobacco products or Nicotine Delivery Products to be sold to any person under the age of twenty-one (21) or not being the recipient's parent or legal guardian, give tobacco products or Nicotine Delivery Products to any person under the age of twenty-one (21).

1.6.2 In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Needham Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

1.6.3 In addition to the notice required under Section 1.6.2, notices provided by the Needham Health Department shall also be posted by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail: (a) As of April 1, 2005, such notice shall state that the sale of tobacco products to persons under age 21 is illegal; (b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage that discloses current referral information about smoking cessation; (c) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating “The sale of nicotine delivery products to minors under 21 years of age is prohibited.”; and (d) The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating, “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be no smaller than 8.5” by 11” and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at, or approaching the cash register. These notices shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 or greater than 9 feet from the floor.

1.6.4 Each person selling or distributing tobacco products or Nicotine Delivery Products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer’s date of birth that the purchaser is twenty-one (21) years or older. Verification is required for any person under the age of 27.

1.6.5 All retail sales of tobacco or Nicotine Delivery Products must be face-to-face between the seller and the buyer.

1.6.6 No person or entity selling tobacco products or Nicotine Delivery Products shall allow anyone under twenty one (21) years of age to sell cigarettes, other tobacco products or Nicotine Delivery Products.

1.6.7 No health care facility, as per our regulations, located in the Town of Needham shall sell or cause to be sold tobacco products and Nicotine Delivery Products. Additionally, no retail establishment that operates or has a health care facility within it, such as a pharmacy or drug store, shall sell or cause to be sold tobacco products and Nicotine Delivery Products.

1.6.8 No educational institution located in the Town of Needham shall sell or cause to be sold tobacco products and Nicotine Delivery Products. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

1.6.9 No person or entity shall sell or distribute blunt wraps in the Town of Needham.

**SECTION 1.7
PERMIT**

TOBACCO AND NICOTINE DELIVERY PRODUCTS SALES

1.7.1 No person shall sell or otherwise distribute tobacco or Nicotine Delivery Products at retail within Needham without first obtaining a Tobacco and Nicotine Delivery Products Sales Permit issued annually by the Needham Board of Health.

1.7.2 As part of the Tobacco and Nicotine Delivery Products Sales Permit application process, the applicant will be provided with the Needham Board of Health regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco or Nicotine Delivery Product sales regarding both state laws regarding the sale of tobacco and this regulation.

1.7.3 As a condition for obtaining and/or renewing a Tobacco and Nicotine Delivery Products Sales Permit, the Needham Board of Health may require tobacco or Nicotine Delivery Products retailers and any employee involved in the act of sale of tobacco products or Nicotine Delivery Products to participate in training programs provided by or approved by the Board regarding compliance with the laws and regulations prohibiting the sale of tobacco products or Nicotine Delivery Products to minors and to individuals under the age of 21.

1.7.4 Each applicant selling tobacco products is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a Tobacco Sales and Nicotine Delivery Products Permit can be issued.

1.7.5 The fee for a Tobacco Sales and Nicotine Delivery Products Permit shall be determined by the Needham Board of Health annually. All such permits shall be renewed annually by December 31st.

1.7.6 A separate permit is required for each retail establishment selling tobacco or Nicotine Delivery Products.

1.7.7 Each Tobacco and Nicotine Delivery Products Sales Permit shall be displayed at the retail establishment in a conspicuous place.

1.7.8 No Tobacco and Nicotine Delivery Products Sales Permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.

1.7.9 A Tobacco and Nicotine Delivery Products Sales Permit is non-transferable, except a new permit will be issued to a retailer who changes location.

1.7.10. Issuance of a Tobacco and Nicotine Delivery Products Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

1.7.11 A Tobacco and Nicotine Delivery Products Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

1.7.12 Maximum Number of Tobacco and Nicotine Delivery Product Sales Permits: At any given time, there shall be no more than twelve (12) Tobacco and Nicotine Delivery Product Sales Permits issued in Needham. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew their permit within 30 days of expiration will be treated as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco and Nicotine Delivery Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products and/or nicotine delivery products. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a "first-come, first-serve" basis as issued permits are either not renewed or are returned to the Board of Health.

SECTION 1.8 FREE DISTRIBUTION AND COUPON REDEMPTION

No person shall distribute, or cause to be distributed, any free samples of tobacco products or Nicotine Delivery Products. No means, instruments or devices that allow for the redemption of all tobacco products or nicotine delivery products for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

SECTION 1.9 CIGARETTE PACKAGING AND CIGAR SALES

1.9.1 No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

1.9.2 No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed a cigar unless the cigar is contained in an original package of at least four (4) cigars. This Section shall not apply to (a) the sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more; (b) a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of the Town of Needham.

SECTION 1.10 SELF SERVICE DISPLAYS

All self-service displays of tobacco products and/or Nicotine Delivery Products are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

SECTION 1.11 TOBACCO VENDING MACHINES AND ROLL-YOUR-OWN MACHINES

1.11.1 All tobacco vending and/or Nicotine Delivery Product machines are prohibited.

1.11.2 All Non-Residential Roll-Your-Own machines are prohibited.

SECTION 1.12 VIOLATIONS

1.12.1 It shall be the responsibility of the permit holder and/or his or her business agent to ensure compliance with all sections of this regulation pertaining to his or her distribution of tobacco or Nicotine Delivery Products. Any permit holder, proprietor(s) or other persons(s) in charge of a place covered by this regulation or his or her business agent or designee who fails to comply with this regulation shall be subject to the following:

a. In the case of a first violation, a fine of one hundred dollars (\$100.00), and the Tobacco Sales and Nicotine Delivery Products Permit shall be suspended for seven (7) consecutive business days.

b. In the case of a second violation within 24 months of the date of the first violation, a fine of two hundred dollars (\$200) and the Tobacco Sales and Nicotine Delivery Products Permit shall be suspended for 12 months.

c. In the case of three or more violations within a 24-month period, a fine of three hundred dollars (\$300) and the Tobacco Sales and Nicotine Delivery Products Permit shall be suspended for 12 months.

A permit holder whose permit has been suspended for 12 months may not apply for a new permit prior to the expiration of the 12-month suspension period.

1.12.2 Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Sales and Nicotine Delivery Products Permit for thirty (30) consecutive business days.

1.12.3 In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products or Nicotine Delivery Products directly to a consumer while his or her permit is suspended shall be subject to the suspension of all board of health issued permits for thirty (30) consecutive business days.

1.12.4 The Needham Board of Health shall provide notice of the intent to suspend, revoke, or deny the issuance or renewal of a Tobacco Sales and Nicotine Delivery Products Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision, and the reasons therefore in writing. The Needham Board of Health after a hearing, may suspend, revoke, or deny the issuance or renewal of the Tobacco Sales and Nicotine Delivery Products Permit. All tobacco products and Nicotine Delivery Products shall be removed from the retail establishment upon suspension of the Tobacco Sales and Nicotine Delivery Products Permit. Failure to remove all tobacco products and Nicotine Delivery Products shall constitute a separate violation of this regulation.

1.12.5 Any permit holder who does not pay the assessed fine within twenty-one days from fine issuance may be subject to criminal proceedings.

SECTION 1.13 NON-CRIMINAL DISPOSITION

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in General Laws, Chapter 40, Section 21 D and Town of Needham General By Laws or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

SECTION 1.14 ENFORCEMENT

Enforcement of this regulation shall be by the Needham Board of Health, Health Director, Environmental Health Agent, Public Health Nurse, other Health Agent, or the Needham Police.

Any person who desires to register a complaint pursuant to the regulation may do so by contacting the Board of Health of Needham or its designated agent(s) and the Board shall investigate.

SECTION 1.15 OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

SECTION 1.16 SEVERABILITY

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

SECTION 1.17 EFFECTIVE DATE

This regulation shall take effect upon publication of a summary of the regulation in a newspaper published in the Town of Needham. As required by M.G.L., Chapter 111, Section 31, an attested copy has been filed with DEP on 9/13/91. Public meetings regarding this regulation were conducted on May 1, May 14, June 18, and July 23, 1991. This regulation was voted by a majority of this Board on July 23, 1991, and amended on June 21, 1994, September 19, 1995, September 16, 1997, July 13, 2001, November 15, 2002, and January 17, 2003. Amendments adopted on November 15, 2002, shall take effect on February 15, 2003. Amendments adopted on February 26, 2003 shall take effect on March 6, 2003. Publication Date: 8/15/91

Amended: 6/21/94

1.4.1 Amended: 9/19/95

1.4.1 Publication Date: 10/12/95

1.6 Amended: 9/16/97

1.6 Publication Date: 12/24/97

Amended: 7/13/01 Publication Date: 8/2/01

1.4 Amended: 11/15/02 Publication Date

Publication Date: 12/21/02

1.2, 1.6-1.17 Amended: 2/26/03 Publication Date 3/06/03

1.3, 1.4.2, 1.6.3, 1.6.4 Amended 2/15/06 Publication Date February 23, 2006

Amended Section 1.7.3 on May 16, 2006 shall take effect on June 8, 2006.

Amended July 14, 2009 shall take effect on October 1, 2009.

Amended July 11, 2013 shall take effect on July 26, 2013.

Amended September 12, 2013 Section 1.6.3

ARTICLE 2

REGULATIONS FOR THE DISPOSAL OF REFUSE

SECTION 2.1 DEFINITIONS

Refuse: is defined as all combustible and non-combustible rubbish, ashes and ordinary commercial wastes. Building or construction wastes and industrial wastes are not included within the term "refuse".

Rubbish: is defined as waste, refuse, broken or rejected matter.

Garbage: is defined as all waste animal, fish, fowl, fruit or vegetable matter produced from or resulting from the use or storage of food.

Salvaging: is defined as picking through, and or, picking through in order to remove, materials previously deposited in any refuse or recycling bin or container.

SECTION 2.2 PRIVATE COLLECTIONS

2.2.1 Private parties, firms or corporations may be authorized to collect refuse, providing such collection is performed in accordance with these regulations.

2.2.2 Private collectors, firms or corporations, shall be licensed by the Board of Health before engaging in the collection of refuse within the Town. (see Chapter 111, Section 31A. General Laws). There shall be a fee as per Article 17 of the Board of Health Regulations, Permit and License Fees, for each vehicle used in such service. Such license may be revoked by the Board of Health, upon receipt of evidence satisfactory to it that the license has not conformed with these regulations or such further regulations as may be adopted, relative to the collection and disposal of refuse.

SECTION 2.3 DISPOSAL OF WASTES

2.3.1 All refuse shall be disposed of at a sanitary landfill designated by the Board of Health and in accordance with these regulations.

2.3.2 Garbage, hazardous material or offensive material shall not be disposed of at any sanitary

landfill. Building, or construction wastes generated from outside of Needham shall not be disposed of at any sanitary landfill without written approval of the Board of Health. Said approval shall be subject to review of standard operating procedures for assuring no hazardous wastes are included in building or construction wastes. Approval may be rescinded if in the opinion of the Board of Health standard operating procedures have not been complied with, or a nuisance condition is created.

SECTION 2.4 MISCELLANEOUS

2.4.1 These regulations shall not prohibit the disposal of combustible refuse in any home or commercial establishment by incineration if no smoke or odors are thereby produced that are classed as nuisances or hazards.

2.4.2 All vehicles employed by licensed collectors of refuse shall be so equipped as to prevent any material from blowing or dropping onto the highways. Private persons transporting refuse to a sanitary landfill shall cover each load of refuse securely so as to prevent any part of said load being transported from blowing or falling upon a street or way.

SECTION 2.5 MAINTENANCE AND USE OF NEEDHAM TRANSFER STATION / TOWN SANITARY LANDFILL

- (a) Operation of the sanitary landfill shall be conducted in accordance with federal and state regulations, including, but not limited to: the Massachusetts Department of Environmental Protection's Solid Waste Management Facility Regulations--310 CMR 19.000.
- (b) Supervision of the dumping and disposal of refuse at the Town sanitary landfill shall be under the Public Works Department, including the right to collect a reasonable charge from licensed collectors as herein defined and all refuse shall be deposited under the direction of the person in charge.
- (c) Only refuse originating in Needham, as hereinbefore defined, shall be deposited at the Town sanitary landfill, unless written approval is provided by the Board of Health.
- (d) Promiscuous dumping, salvaging or burning is prohibited.
- (e) Salvaging of material shall not be allowed except by permit issued by the Board of Health.
- (f) The dumping hours shall be as set by the Department of Public Works. Dumping

outside of those hours is prohibited.

- (g) Trucks without proper covers will not be allowed to enter the dumping area.
- (j) No private collectors, firms or corporations licensed under Section 3.2 hereof, shall deposit stumps, logs, trees, brush or other forestry residual material within the Needham Disposal Area.
- (k) No persons shall deposit or leave refuse upon any of the approaches to the sanitary landfill or upon any part of the dumping area except that designated by the person in charge thereof.
- (l) As a condition of using this facility, the owner, operator or other person in charge of a vehicle transporting refuse shall submit evidence of or answer any reasonable questions concerning the origin of refuse contained in such vehicle as the person in charge of the sanitary landfill herein above referred to, may request. Failure to comply with these regulations or to furnish creditable information when requested shall be sufficient cause for the Board of Health to revoke a license of any licensee hereunder and the enforcement of any other penalties herein authorized.

SECTION 2.6 PENALTIES

2.6.1 Whoever violates any provision of these regulations shall be punished by a fine up to \$200 for each offense. Each day of violation shall be deemed a separate offense.

Adopted by the Board of Health: 5/2/52

Amended: 6/17/65, 10/23/67

Amended: 7/17/69, 7/21/76

Amended: 5/28/96

Board of Health

Saul Adams, M.D., Chairman

Ray Taurasi, M.B.A., Secretary

Ed Cosgrove, Ph.D.

Needham Board of Health

Article 3

Regulation for the Control of Public Nuisances

Section I

General

The Board of Health, Town of Needham, Massachusetts, acting under the authority of Section 31, Chapter III of the General Laws and amendments and additions

thereto, and by any other power thereto enabling, has adopted the following regulation in the interest of and for the preservation of the public health.

Section II

Regulated Conduct

The Board of Health shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable after notice and such owner or occupant shall be subject to a fine up to \$1,000 for each offense. Each day the violation continues shall be a separate offense.

Such order shall be in writing and be served personally to the owner, occupant or his authorized agent by any person authorized to serve civil process; or a copy of the order may be left at the last and usual place of abode of the owner, occupant or agent by registered mail, return receipt requested, if he is known and within the commonwealth. If the order is directed against the owner and if the residence and whereabouts of the owner or his agent are unknown or outside the commonwealth, the board may direct the order to be served by posting a copy thereof in a conspicuous place on the premises and by advertising it for at least three days out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building is situated.

If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due the Town upon the completion of the removal and the rendering of an account therefore to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

A debt due the Town shall constitute a lien on the land upon which the structure is located if a statement of claim, signed by the Board of Health and setting forth the amount claimed without interest, is filed with the Registry of Deeds within ninety days after the debt becomes due. Such lien shall take effect upon the filing of the statement and shall continue for two years from the first day of October next following the date of such filing. Within a reasonable time after filing the statement of claim with the Registry of Deeds (and certainly before the expiration of the two year period during which the lien is in effect), the Board of Health shall certify to the assessors the claims upon the land. The assessors shall, in turn, commit such claims with their warrant to the collector of the taxes, who shall have the same power and duties with respect to such claim as in the case of the annual taxes upon

real estate. The provisions of law relative to the nonpayment thereof, and the redemption of land so sold or taken shall apply to such claim.

The provisions of the above paragraph relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the Board of Health shall act hereunder in place of the Board of Selectmen.

Section III

Variance

The Board of Health may vary any provision of these regulations with respect to any particular case when, in its opinion, the enforcement thereof would manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of these standards and provided further, such variance may be granted only after notice is given to all affected occupants and after a hearing is held.

Section IV

Enforcement & Penalties

Criminal complaint: Whoever violates any provision of these rules and regulations may be penalized up to \$1,000 for each offense. Each day on which a violation exists shall be deemed to be a separate offense.

This regulation shall be effective January 27, 2005

Needham Board of Health

Edward Cosgrove, Chairperson

Alan Stern, Vice-Chairperson

Denise Garlick, Member

ARTICLE 4

HORSES, COWS, GOATS, SWINE, SHEEP AND POULTRY

SECTION 4.1

No person shall keep or allow to be kept in any building, or on any premises of which he may be the owner, lessee, tenant or occupant any horses, cows, goats, swine, sheep or poultry without a permit from the Board of Health. No rooster shall be kept unless the permit specifically so provides. All such permits shall expire annually on December 31st and may be revoked by the Board of Health at any time for cause.

SECTION 4.2

The owner or persons in control of any buildings, or premises in which cows, goats, sheep, poultry or swine are kept shall keep the buildings and premises clean and free from decaying food, filth, dirt or stagnant water. The buildings and pens shall be whitewashed or disinfected and kept in such condition as may be ordered by the Board of Health or its agent.

SECTION 4.3

The owner, or other persons having control of any existing building, or any building hereafter erected, or converted into a barn, for the stabling of horses or other domestic animals shall keep such barn, or stable and its yard clean, and shall provide a pit constructed of cement, or other suitable material for the reception of manure and other refuse matter. Wherever a public sewer is accessible, the Board of Health will decide as to the advisability of connecting such building with such public sewer.

SECTION 4.4

During the month of April, May, June, July, August and September, manure shall be removed from all pits once every seven (7) days unless kept in covered or screened manure pits.

SECTION 4.5

No live fowl shall be kept in a hen house or enclosure that is less than one-hundred (100) feet from any dwelling on adjacent property or that is less than fifty (50) feet from any public way. The number of animals that may be kept in a house or enclosure shall be as determined by

the Board of Health on recommendation of the Sanitarian.

SECTION 4.6

Live fowl shall be confined at all times and shall not be permitted to run at large

Note: Pertinent State Laws relating to dogs and dog bites are as follows:

(General Laws, Tercentenary Edition as amended, Chapter 140, Sections 138, 139, 141, 145-147, 167, 168).

*Section (5) shall apply to take effect one (1) year from date of publication of the above regulations.

Adopted under provisions of General Laws, Commonwealth of Massachusetts, Chapter 111, Sec. 31.

Approved October 16, 1959.

ARTICLE 5

Private Swimming Pool Fence Regulations

Section 5.1 AUTHORITY

The Board of Health pursuant to the authority granted under Massachusetts General Laws (M.G.L.) Chapter 111, Section 31 hereby adopts the following regulation to protect the public Health of the community.

Section 5.2 DEFINITIONS

The definitions of all terms used in this regulation shall conform with the definitions as stated in the 6th Edition of the State Building Code, and as subsequently amended.

Section 5.3 VIOLATIONS

The owner of any private pool who does not have a fence which conforms with the requirements of the State Building Code, shall be subject to a fine of \$50 per violation. Each day that the fence is not in conformance with the State Building Code shall be deemed a separate violation.

Section 5.4 ENFORCEMENT

Violations of this regulation may be enforced by any agent of the Board of Health.

ARTICLE 6

OFFENSIVE TRADES, OCCUPATIONS AND PRACTICES

SECTION 6.1

The Board of Health may prohibit the exercise of the following trades or employment: viz, those of slaughtering animals, or rendering animal matter, of manufacturing fertilizers and/or soaps, of mixing or storing refuse or vegetable substances, of smoking fish or meat, of refining oils, of making egg dressing, varnish, glue, gas, gasoline or any burning fluid, except at the place or places where such trades or employments are now lawfully established or which may hereafter be assigned by the Board, such trades or employments being either nuisances or hurtful to the town, attended by noisome odors or otherwise injurious or dangerous to the public health.

SECTION 6.2

No old rags, old papers or other refuse material shall be brought into or allowed to remain within, any building used as a dwelling, if gathered from any source outside of such building.

SECTION 6.3

No person shall sell, or offer for sale, any second-hand wearing apparel, bedding, household furniture or household utensils that have been exposed to any communicable disease, or that are infected with vermin, until the same has been cleansed and disinfected in a manner satisfactory to the Board of Health.

SECTION 6.4

6.4.1 No person or persons engaged in farming shall use manure or other organic matter as a fertilizer, unless said fertilizer is spread upon the land only when such land is in a condition to plough. Any fertilizer so spread shall be ploughed under within forty-eight (48) hours.

6.4.2 Acting under powers vested in it by the General Laws, Chapter 111, Section 143, 31 and all other enabling statutes thereof, the Board of Health has added to the existing regulations on offensive trades, occupations and practices by inserting the preceding section.)

ARTICLE 7

MHOA Model Rules and Regulations for Body Art Establishments and Practitioners

Section:

1. Purpose
2. Authority
3. Definitions
4. Exemptions
5. Restrictions
6. Operation of Body Art Establishments
7. Standards of Practice
8. Exposure Incident Report
9. Injury Reports
10. Complaints
11. Application for Body Art Establishment Permit
12. Application for Body Art Practitioner Permit
13. Grounds for Denial of Permit, Revocation of Permit or Refusal to Renew Permit
14. Grounds for Suspension of Permit
15. Procedure for Hearings
16. Severability
17. Fine for Violation
18. Non-criminal Disposition
19. Effective Date

1. Purpose

Whereas body art is becoming prevalent and popular throughout the Commonwealth; and whereas knowledge and practice of universal precautions, sanitation, personal hygiene, sterilization and aftercare requirements on the part of the practitioner should be demonstrated to prevent the transmission of disease or injury to the client and/or practitioner; now, therefore the Board of Health of the Town of Needham passes these rules and regulations for the practice of

body art in the Town of Needham as part of our mission to protect the health, safety and welfare of the public.

2. Authority

These regulations are promulgated under the authority granted to the Board of Health under Massachusetts General Law 111, section 31.

3. Definitions

Aftercare means written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

Applicant means any person who applies to the Board of Health for either a body art establishment permit or practitioner permit.

Autoclave means an apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.

Autoclaving means a process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of an autoclave for a minimum of thirty minutes at 20 pounds of pressure (PSI) at a temperature of 270 degrees Fahrenheit.

Bloodborne Pathogens Standard means OSHA Guidelines contained in 29 CFR 1910.1030, entitled "Occupational Exposure to Bloodborne Pathogens."

Board of Health or Board means the Board of Health that has jurisdiction in the community in which a body art establishment is located including the Board or officer having like powers and duties in towns where there is no Board of Health.

Body Art means the practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in

Medicine, such as implants under the skin, which procedures are prohibited.

Body Art Establishment or Establishment means a location, place, or business that has been granted a permit by the Board, whether public or private, where the practices of body art are performed, whether or not for profit.

Body Art Practitioner or Practitioner means a specifically identified individual who has been granted a permit by the Board to perform body art in an establishment that has been granted a permit by the Board.

Body Piercing means puncturing or penetrating the skin of a client with presterilized single-use needles and the insertion of presterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a presterilized single-use stud-and-clasp system manufactured exclusively for ear-piercing.

Braiding means the cutting of strips of skin of a person, which strips are then to be intertwined with one another and placed onto such person so as to cause or allow the incised and interwoven strips of skin to heal in such intertwined condition.

Branding means inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

Cleaning area means the area in a Body Art Establishment used in the sterilization, sanitation or other cleaning of instruments or other equipment used for the practice of body art.

Client means a member of the public who requests a body art procedure at a body art establishment.

Contaminated Waste means waste as defined in 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII and/or 29 Code of Federal Regulation part 1910.1030. This includes any liquid or semi-liquid blood or other potentially infectious material; contaminated items that would release blood or other potentially infectious material in a liquid or semi-liquid state if compressed; items on which there is dried blood or other potentially infectious material and which are capable of releasing these materials during handling; sharps and any wastes containing blood or other potentially infectious materials.

Cosmetic Tattooing, also known as permanent cosmetics, micro pigment implantation or dermal pigmentation, means the implantation of permanent pigment around the eyes, lips

and cheeks of the face and hair imitation.

Disinfectant means a product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).

Disinfection means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

Ear piercing means the puncturing of the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.

Equipment means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

Exposure means an event whereby there is an eye, mouth or other mucous membrane, non-intact skin or parental contact with the blood or bodily fluids of another person or contact of an eye, mouth or other mucous membrane, non-intact skin or parenteral contact with other potentially infectious matter.

Hand Sink means a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.

Hot water means water that attains and maintains a temperature 110°-130°F.

Instruments Used for Body Art means hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during any body art procedure.

Invasive means entry into the client's body either by incision or insertion of any instruments into or through the skin or mucosa, or by any other means intended to puncture, break, or otherwise compromise the skin or mucosa.

Jewelry means any ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel; solid 14k or 18k white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

Light colored means a light reflectance value of 70 percent or greater.

Minor means any person under the age of eighteen (18) years.

Mobile Body Art Establishment means any trailer, truck, car, van, camper or other motorized or non-motorized vehicle, a shed, tent, movable structure, bar, home or other facility wherein, or concert, fair, party or other event whereat one desires to or actually does conduct body art procedures.

Operator means any person who individually, or jointly or severally with others, owns, or controls an establishment, but is not a body art practitioner.

Permit means Board approval in writing to either (1) operate a body art establishment or (2) operate as a body art practitioner within a body art establishment. Board approval shall be granted solely for the practice of body art pursuant to these regulations. Said permit is exclusive of the establishment's compliance with other licensing or permitting requirements that may exist within the Board's jurisdiction.

Person means an individual, any form of business or social organization or any other non-governmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, associations, trusts or unincorporated organizations.

Physician means an individual licensed as a qualified physician by the Board of Registration in Medicine pursuant to M.G.L. c. 112 § 2.

Procedure surface means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

Sanitary means clean and free of agents of infection or disease.

Sanitize means the application of a U.S. EPA registered sanitizer on a cleaned surface in accordance with the label instructions.

Scarification means altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

Sharps means any object, sterile or contaminated, that may intentionally or accidentally cut or penetrate the skin or mucosa, including, but not limited to, needle devices, lancets, scalpel blades, razor blades, and broken glass.

Sharps Container means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the International Biohazard Symbol.

Single Use Items means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

Sterilize means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores.

Tattoo means the indelible mark, figure or decorative design introduced by insertion of dyes or pigments into or under the subcutaneous portion of the skin.

Tattooing means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.

Temporary Body Art Establishment means the same as Mobile Body Art Establishment.

Three dimensional "3D" Body Art or Beading or Implantation means the form of body art consisting of or requiring the placement, injection or insertion of an object, device or other thing made of matters such as steel, titanium, rubber, latex, plastic, glass or other inert materials, beneath the surface of the skin of a person. This term does not include Body Piercing.

Ultrasonic Cleaning Unit means a unit approved by the Board, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high frequency oscillations transmitted through the contained liquid.

Universal Precautions means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC), as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) to Health-Care and Public-Safety Workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38 No. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients

During Exposure-Prone Invasive Procedures" in MMWR, July 12,1991, Vo1.40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid-contaminated products.

4. Exemptions

- (A) Physicians licensed in accordance with M.G.L. c. 112 § 2 who perform body art procedures as part of patient treatment are exempt from these regulations.
- (B) Individuals who pierce only the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system are exempt from these regulations.

5. Restrictions

- (A) Tattooing, piercing of genitalia, branding or scarification may not be performed on a person under the age of 18.
- (B) Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18 provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure. Properly identified shall mean a valid photo identification of the adult and a birth certificate of the minor.
- (C) No body art shall be performed upon an animal.
- (D) The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenulum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called "deep" piercing of the penis – meaning piercing through the shaft of the penis, or "trans-penis" piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotum – meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina.
- (E) The following practices hereby prohibited unless performed by a medical doctor

licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; three dimensional/beading/implementation
tooth filing/fracturing/removal/tattooing; cartilage modification; amputation; genital modification; introduction of saline or other liquids.

6. Operation of Body Art Establishments

Unless otherwise ordered or approved by the Board, each body art establishment shall be constructed, operated and maintained to meet the following minimum requirements:

(A) Physical Plant

- (1) Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.
- (2) Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.
- (3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.
- (4) Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by a dividers or partition at a minimum.
- (5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 foot candles 3 feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, ~~and~~ where instruments and sharps are assembled and all cleaning areas.
- (6) All electrical outlets in operator areas and cleaning areas shall be equipped

with approved ground fault (GFCI) protected receptacles.

- (7) A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.
- (8) There shall be a sharps container in each operator area and each cleaning area.
- (9) There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if Board-approved toilet facilities are located in the retail shopping center within 300 feet of the body art establishment so as to be readily accessible to any client or practitioner.
- (10) The public water supply entering a body art establishment shall be protected by a testable, reduced pressure back flow preventor installed in accordance with 142 Code of Massachusetts Regulation 248, as amended from time to time.
- (11) At least one covered, foot operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leak-proof, rodent-resistant containers and shall be removed from the premises at least weekly.
- (12) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of non-contaminated liquid wastes in accordance with all applicable Federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.
- (13) All instruments and supplies shall be stored in clean, dry, and covered

containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.

- (14) The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.
- (15) The establishment shall have a customer waiting area, exclusive and separate from any workstation, instrument storage area, cleaning area or any other area in the body art establishment used for body art activity.
- (16) No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., Seeing Eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.
- (17) Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of non-alcoholic fluids being offered to a client during or after a body art procedure.

(B) Requirements for Single Use Items Including Inks, Dyes and Pigments

- (1) Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.
- (2) All products applied to the skin, such as but not limited to body art stencils, applicators, gauze and razors, shall be single use and disposable.
- (3) Hollow bore needles or needles with cannula shall not be reused.
- (4) All inks, dyes, pigments, solid core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.
- (5) Inks, dyes or pigments may be mixed and may only be diluted with water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of

the tattoo, these single-use cups or caps and their contents shall be discarded.

(C) **Sanitation and Sterilization Measures and Procedures**

- (1) All non-disposable instruments used for body art, including all reusable solid core needles, pins and stylets, shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water, (to remove blood and tissue residue), and shall be placed in an ultrasonic unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.
- (2) After being cleaned, all non-disposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave sold for medical sterilization purposes under approval of the U.S. Food and Drug Administration. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six (6) months.
- (3) The autoclave shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board. Autoclaves shall be located away from workstations or areas frequented by the public.
- (4) Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be retained by the operator for a period of three (3) years and made available to the Board upon request.
- (5) All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

- (6) Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.
- (7) If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
- (8) When assembling instruments used for body art procedures, the operator shall wear sterile, disposable medical gloves and use medically recognized sterile techniques to ensure that the instruments and gloves are not contaminated.
- (9) Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be stored in a dry, clean environment until used. Should such items become contaminated directly or indirectly with bodily fluids, the items shall be washed in accordance with standards applicable to hospitals and medical care facilities, at a temperature of 160°F or a temperature of 120°F with the use of chlorine disinfectant.

(D) Posting Requirements

The following shall be prominently displayed:

- (1) A Disclosure Statement, a model of which shall be available from the Board. A Disclosure Statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures.
- (2) The name, address and phone number of the Needham Board of Health
- (3) An Emergency Plan, including:
 - (a) a plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;
 - (b) a telephone in good working order shall be easily available and accessible to all employees and clients during all hours of operation; and
 - (c) a sign at or adjacent to the telephone indicating the correct emergency telephone numbers.
- (4) An occupancy and use permit as issued by the local building official.

- (5) A current establishment permit.
- (6) Each practitioner's permit.

(E) Establishment Record keeping

The establishment shall maintain the following records in a secure place for a minimum of three (3) years, and such records shall be made available to the Board upon request:

- (1) Establishment information, which shall include:
 - (a) establishment name;
 - (b) hours of operation;
 - (c) owner's name and address;
 - (d) a complete description of all body art procedures performed; all procedures need written protocol reviewed and approved by the Board of Health.
 - (e) an inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;
 - (f) A Material Safety Data Sheet, when available, for each ink and dye used by the establishment; and
 - (g) copies of waste hauler manifests
 - (h) copies of commercial biological monitoring tests
 - (i) Exposure Incident Report (kept permanently)
 - (j) a copy of these regulations.
- (2) Employee information, which shall include:
 - (a) full legal names and exact duties;
 - (b) date of birth;
 - (c) home address;
 - (d) home /work phone numbers;
 - (e) identification photograph;
 - (f) dates of employment;
 - (g) Hepatitis B vaccination status or declination notification; and
 - (h)** training records
- (3) Client Information, which shall include:
 - (a) name;

- (b) age and valid photo identification
- (c) address, work and home phone number of the client;
- (d) date of the procedure;
- (e) name of the practitioner who performed the procedure(s);
- (f) description of procedure(s) performed and the location on the body;
- (g) a signed consent form as specified by 7(D)(2); and,
- (h) if the client is a person under the age of 18, proof of parental or guardian identification, presence and consent including a copy of the photographic identification of the parent or guardian.

Client information shall be kept confidential at all times.

(4) Exposure Control Plan

Each establishment shall create, update, and comply with an Exposure Control Plan. The Plan shall be submitted to the Board for review so as to meet all of the requirements of OSHA regulations, to include, but not limited to, 29 Code of Federal Regulation 1910.1030 OSHA Bloodborne Pathogens Standards et seq, as amended from time to time. A copy of the Plan shall be maintained at the Body Art Establishment at all times and shall be made available to the Board upon request.

- (F) No person shall establish or operate a Mobile or Temporary Body Art Establishment.

7. Standards of Practice

Practitioners are required to comply with the following minimum health standards:

- (A) A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S Centers for Disease Control and Prevention.
- (B) A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.
- (C) Practitioners who use ear-piercing systems must conform to the manufacturers directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear piercing system on any part of the client's body other than the lobe of the ear.

- (D) Health History and Client Informed Consent. Prior to performing a body art procedure on a client, the practitioner shall:
- (1) Inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
 - (a) history of diabetes;
 - (b) history of hemophilia (bleeding);
 - (c) history of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants etc.;
 - (d) history of allergies or adverse reactions to pigments, dyes, latex or other sensitivities;
 - (e) history of epilepsy, seizures, fainting, or narcolepsy;
 - (f) use of medications such as anticoagulants or low-dose aspirin regime, which thin the blood and/or interfere with blood clotting; and
 - (g) any other conditions such as hepatitis or HIV.
 - (2) Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by section 7(K).
- (E) A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, the practitioner must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
- (F) All practitioners should be properly immunized against hepatitis B virus (HBV).
- (G) All procedures performed at the establishment shall have a written protocol which is reviewed and approved by the Board of Health
- (H) A practitioner shall wear disposable, single use medical gloves to prepare the body art site and sterile, disposable single-use gloves to perform the procedure. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person.

The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with section (E) before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for handwashing procedures as part of a good personal hygiene program.

- (I) The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
- (J) Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.
- (K) Preparation and care of a client's skin area must comply with the following:
 - (1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
 - (2) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors shall be used. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
 - (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.
- (L) Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.

(M) The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:

- (1) on the proper cleansing of the area which received the body art;
- (2) to consult a health care provider for:
 - (a) unexpected redness, tenderness or swelling at the site of the body art procedure;
 - (b) any rash;
 - (c) unexpected drainage at or from the site of the body art procedure; or
 - (d) a fever within 24 hours of the body art procedure; and
- (3) of the address, and phone number of the establishment.

A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Board.

(N) Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000: Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waster, State Sanitary Code, Chapter VIII.

(O)

8. Exposure Incident Report

An Exposure Incident Report shall be completed by the close of the business day during which an exposure has or might have taken place by the involved or knowledgeable body art practitioner for every exposure incident occurring in the conduct of any body art activity.

Each Exposure Incident Report shall contain:

- (1) A copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident;
- (2) A full description of the exposure incident, including the portion of the body involved therein;
- (3) Instrument(s) or other equipment implicated;
- (4) A copy of body art practitioner license of the involved body art practitioner;
- (5) Date and time of exposure;
- (6) A copy of any medical history released to the body art establishment or body art practitioner; and
- (7) Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

9. Injury and/or Complication Reports

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board which issued the permit, with a copy to the injured client within five working days of its occurrence or knowledge thereof. The report shall include:

- (A) the name of the affected client;
- (B) the name and location of the body art establishment involved;
- (C) the nature of the injury, infection complication or disease;
- (D) the nature of the advice given to the client;
- (E) the name and address of the affected client's health care provider, if any;
- (F) any other information considered relevant to the situation.

10. Complaints

- (A) The Board shall investigate complaints received about an establishment or practitioner's practices or acts, which may violate any provision of the Board's regulations.
- (B) If the Board finds that an investigation is not required because the alleged act or practice is not in violation of the Board's regulations, then the Board shall notify the complainant of this finding and the reasons on which it is based.
- (C) If the Board finds that an investigation is required, because the alleged act or practice may be in violation of the Board's regulations, the Board shall investigate and if a finding is made that the act or practice is in violation of the Board's regulations, then the Board shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant of its action in this manner.

11. Application for Body Art Establishment Permit

- (A) No person may operate a body art establishment except with a valid permit from the Board.

- (B) Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term “application” as used herein shall include the original and renewal applications.
- (C) An establishment permit shall be valid from the date of issuance and for no longer than one year unless revoked sooner by the Board.
- (D) The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:
 - (1) Name, address, and telephone number of:
 - (a) the body art establishment;
 - (b) the operator of the establishment; and
 - (c) the body art practitioner(s) working at the establishment;
 - (2) The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;
 - (3) A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board’s body art regulations;
 - (3) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process; and,
 - (4) Exposure Report Plan
 - (5) Such additional information as the Board may reasonably require.
- (E) The annual fee for the Body Art Establishment Permit shall be \$200.
- (F) A permit for a body art establishment shall not be transferable from one place or person to another.

12. Application for Body Art Practitioner Permit

- (A) No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.

- (B) A practitioner shall be a minimum of 18 years of age.
- (C) A practitioner permit shall be valid from the date of issuance and shall expire no later than one year from the date of issuance unless revoked sooner by the Board.
- (D) Application for a practitioner permit shall include:
 - (1) name;
 - (2) date of birth;
 - (3) residence address;
 - (4) mailing address;
 - (5) phone number;
 - (6) place(s) of employment as a practitioner; and
 - (7) training and/or experience as set out in (E) below.

(E) Practitioner Training and Experience

- (1) In reviewing an application for a practitioner permit, the Board may consider experience, training and/or certification acquired in other states that regulate body art.
- (2) Training for all practitioners shall be approved by the Board and, at a minimum, shall include the following:
 - (a) bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; hand washing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and
 - (b) Current certification in First Aid and cardiopulmonary resuscitation (CPR).

Examples of courses approved by the Board include "Preventing Disease Transmission" (American Red Cross) and "Bloodborne Pathogen Training" (U.S. OSHA). Training/courses provided by professional body art organizations or associations or by equipment manufacturers may also be submitted to the Board for approval.

- (3) The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on

anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin).

- (5) The applicant for a tattoo, branding or scarification practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the anatomy course.
 - (6) The applicant for all practitioners shall submit evidence satisfactory to the Board of at least two years actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.
- (F) A practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.
- (G) The annual fee for the Body Art Practitioner Permit shall be \$100.

13. Grounds for Suspension, Denial, Revocation, or Refusal to Renew Permit

- (A) The Board may suspend a permit, deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for suspension, denial, revocation or refusal to renew:
 - (1) any actions which would indicate that the health or safety of the public would be at risk;
 - (2) fraud, deceit or misrepresentation in obtaining a permit, or its renewal;
 - (3) criminal conduct which the Board determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body

art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of nolo contendere or an admission of sufficient facts;

- (4) any present or past violation of the Board's regulations governing the practice of body art;
 - (5) practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;
 - (6) being habitually drunk or being dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;
 - (7) knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;
 - (8) continuing to practice while his/her permit is lapsed, suspended, or revoked; and
 - (9) having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in the Board's regulations.
 - (10) other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art;
- (B) The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit. The applicant, establishment or practitioner shall have seven (7) days after receipt of such written notice in which to comply with the Board's regulations. The Board may deny, revoke or refuse to renew a permit, if the applicant, establishment or practitioner fails to comply after said seven (7) days subject to the procedure outlined in Section 15.
- (C) Applicants denied a permit may reapply at any time after denial.

14. Grounds for Suspension of Permit

The Board may summarily suspend a permit pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Board determines that an establishment and/or a practitioner is an immediate and serious threat to the public health, safety or welfare. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board.

15. Procedure for Hearings

The owner of the establishment or practitioner shall be given written notice of the Board's intent to hold a hearing for the purpose of suspension, revocation, denial or refusal to renew a permit. This written notice shall be served through a certified letter sent return receipt requested or by constable. The notice shall include the date, time and place of the hearing and the owner of the establishment or practitioner's right to be heard. The Board shall hold the hearing no later than 21 days from the date the written notice is received.

In the case of a suspension of a permit as noted in Section 13, a hearing shall be scheduled no later than 21 days from the date of the suspension.

16. Severability

If any provision contained in the model regulations is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

1. Fine for Violation

The fine for a violation of any provision of these Rules and Regulations shall be \$200 per offense for each body art establishment and \$100 per offense for each body art practitioner. Each day that a violation continues shall be deemed to be a separate offense.

18. Non-criminal Disposition

In accordance with MGL chapter 40, section 21D and Article 9 of the Town of Needham General By-Laws, whoever violates any provision of these Rules and Regulations may be penalized by non-criminal disposition.

19. Effective Date

These rules and regulations shall be effective as of February 8, 2001.

ARTICLE 8

RULES AND REGULATIONS GOVERNING THE PRACTICE OF MASSAGE AND THE CONDUCT OF ESTABLISHMENT FOR THE GIVING OF MASSAGE, VAPORS, POOL SHOWER OR OTHER BATHS

SECTION 8.1 DEFINITIONS

Massage: means the manipulation or conditioning of part or parts of the body by manual, mechanical or other means as a beauty treatment, for purported health or medical treatment, or for the purpose of invigoration.

Establishment For Giving Massage: or Vapor, Pool, Shower, or Other, Baths: means the office place of business, or premises where massage is practiced or where therapeutic or conditioning bathes of water, vapor, or other substance are given.

Approved: means approved by the Board of Health of the Town of Needham.

Approved Certificate of Massage: means a certificate of completion which meets the standards of a state or national professional association or institute with specific emphasis on courses on the art and science of massage, which includes both theory and practice.

Person: means corporation, company, association, society, firm partnership and joint stock company as well as an individual, male or female, as the case may be.

SECTION 8.2 PERSONAL LICENSURE

8.2.1 License. No person shall practice massage or conduct for the giving of massage; or vapor, pool, shower, or other baths for hire or reward, or advertise or hold himself out as being engaged in the business of massage or the giving of said baths in the Town of Needham without being licensed therefor from the Board of Health.

8.2.2 Requirements. No person shall be licensed to practice massage or conduct an establishment for giving massage; or vapor, pool, shower, or other baths unless he or she meets the following requirements:

- (a) Be twenty-one (21) years of age or older.

- (b) Be of good moral and ethical character.
- (c) Submit to the Board of Health a completed application form containing all the information requested by said form.
- (d) Has received an approved certificate in massage.

8.2.3 Fee. The fee for such license shall be as established by the Board of Health and as listed under Article 17, Board of Health Regulations, Permits and License Fees.

8.2.4 License Expiration. Licenses shall automatically expire on December 31st of each year.

SECTION 8.3 ESTABLISHMENT LICENSURE

8.3.1 License. Every establishment for the giving of massage; or vapor, pool, shower, or other baths shall be licensed by the Board of Health.

8.3.2 Requirements. Every establishment for the giving of massage; or vapor, pool, shower, or other baths shall meet the following:

- (a) It shall be well-lighted and well-ventilated.
- (b) No room used by the licensee in the conduct of this business shall be used as a bedroom.
- (c) There shall be approved toilet and washing facilities within the premises, readily available to the patients and affording sufficient privacy. Each shower shall have a foot tub with a 0.3 to 0.6 percent privacy. Each shower shall have a foot tub with 0.3 to 0.6 per cent solution of available chlorine or its equal as a disinfectant. Every establishment shall be equipped with the following minimum facilities: one women's toilet and lavatory and one men's toilet, urinal and lavatory for each 40 patrons or fraction thereof.
- (d) Where patrons of both sexes are accommodated at the same time adequate arrangements shall be made for separation of rooms and facilities used by each sex.

- (e) All rooms of the establishment and furniture and equipment therein shall be kept clean at all times.
- (f) All rooms used for reception and treatment of patrons shall be arranged so as to afford adequate fire protection and shall have satisfactory means of egress in case of fire as approved by the Building Inspector.
- (g) All robes, sheets, blankets, pillow cases, wearing apparel, or other materials which may come in direct contact with the body shall be adequately cleaned and washed after each use according to latest modern methods.
- (h) All equipment, instruments and devices which may come in contact with the body shall be subjected to an approved bactericidal treatment after each use by (a) Immersion for at least two (2) minutes in a lukewarm chlorine bath containing at least 50 p.p.m. of available chlorine or its equal or (b) Immersion in hot water of over a temperature of 170 degrees fahrenheit for at least two minutes. If the equipment, instruments and devices which may come in contact with the body can not be subjected to treatment as found in items (a) and (b) of Section 3.2.I. an impervious sheeting shall be supplied by the owner and put on the surface of contact and shall be discarded after each use.
- (i) Every individual employed by an establishment for the giving of massage; or vapor, pool, shower, or other baths shall be licensed under Section 2 hereof.

8.3.3 Fee. The fee for such a license shall be as established by the Board of Health and as listed under Article 17, Board of Health Regulations, Permits and License Fees.

8.3.4 License Expiration. Licenses shall automatically expire on December 31st of each year.

SECTION 8.4 EXCEPTIONS AND EXCLUSIONS

8.4.1 Persons Excepted. Physicians, physical therapists, or chiropodist (podiatrists) registered in the Commonwealth of MA are excluded. A person registered as a barber or an apprentice under the provisions of Section 87 or Section 87 I of Chapter 112 of the General Laws or as a hairdresser,operator, or a student under the provisions of Section 87 T to 87 JJ, inclusive, of said Chapter 112 of the General Laws may practice facial and scalp massage being licensed under this Chapter.

8.4.2 Exceptions In Cases of Persons Licensed By Other Communities.

A person licensed to practice massage or conduct an establishment in any other Town in the Commonwealth may, at the request of a physician, attend patients, specified by the physician, in Needham. He shall, if requested, submit to the Board of Health a copy of his license from another community and written confirmation of the physician's request.

8.4.3 Establishment Exceptions. Hospitals, nursing and convalescent homes, and other similar licensed institutions where massage and baths may be given, are excluded from the definition of an Establishment.

BOARD OF HEALTH

NEEDHAM MA

Date Regulation Passed: 10/15/70

Amendments/Changes: 1988

1995 - Fee change/Ammend 9.2.3 and 9.3.3
2002

ARTICLE 9

AQUIFER PROTECTION DISTRICT REGULATIONS

The Board of Health, Town of Needham, Massachusetts, acting under the authority of Section 31, Chapter 111, of the Massachusetts General Laws and amendments and additions thereto, and all other powers herewith adopt the following additions to the Board of Health Regulations:

SECTION 9.1 APPLICABILITY

This regulation shall apply to all premises located in whole or in part within an Aquifer Protection District as established in the Needham Zoning Bylaw.

SECTION 9.2 SEWAGE DISPOSAL

9.2.1 Disposal of sewage in lagoons is prohibited.

9.2.2 Use of any solid, liquid or gaseous material for the purpose of cleaning, treating, unclogging, disinfecting, or deodorizing an on-site sewage disposal system is prohibited unless specifically approved by the Board of Health.

SECTION 9.3 TOXIC OR HAZARDOUS MATERIALS STORAGE, USE AND DISPOSAL DEFINITION

9.3.1 Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Law (MGL) Chapter 21C and 21E or Massachusetts Hazardous Waste regulations (310 CMR 30.000).

SECTION 9.4 GENERAL HANDLING

9.4.1 Premises on which toxic or hazardous materials are used or stored in quantities greater than associated with normal household use shall be subject to the following:

- (a) The owner of the premises shall register with the Board of Health the types of materials used or stored, quantities, location, and method of handling. An inventory of such materials shall be maintained on the premises and be reconciled with purchase, use, sales and disposal records on a monthly basis, in order to detect any product loss. Registration required by this provision shall be initially submitted by December 31, 1981 and annually thereafter. Maintenance and reconciliation of inventories shall also begin by December 31, 1981.
- (b) **Wastes containing toxic or hazardous materials shall not be disposed on-site, but shall be held on the premises in product tight containers for removal by a licensed carrier and for disposal in accordance with G.L. c 21C**
- (c) **The Board of Health may require that containers of toxic or hazardous materials be stored on an impervious, chemical resistant surface compatible with the materials being stored, and that the storage area be enclosed with a permanent dike of impermeable construction.**
- (d) **Every person having knowledge of a spill, leak or other loss of toxic or**

hazardous materials shall report the spill or loss of same to the Fire Department and to the Hazardous Waste Coordinator.

SECTION 9.5 UNDERGROUND STORAGE

9.5.1 No new or replacement underground storage facilities shall be allowed within an Aquifer Protection District.

9.5.2 The following regulations shall apply to all existing underground toxic or hazardous material storage systems with capacities greater than 500 gallons:

- (a) Owners shall file with the Board of Health the size, type, age, and location of each tank, and the type of fuel or chemical stored in each, on or before December 31, 1981. Evidence of date of purchase and installation, including Fire Department permit, if any, shall be included along with a sketch map showing the location of such tanks on the property.**
- (b) Owners of tanks for which evidence of installation date is not available shall, at the order of the Board of Health, have such tanks system tested. If either the Board of Health or the Fire Chief determines that the tank is not product tight it shall be removed and DEP notified.**
- (c) The owner of an existing registered underground storage tanks, as of July 1, 2009, will need to send their annual Third Party UST Inspection Form (DFS Form FP-289) to Mass DEP instead of to Department of Fire Services. There is no need to re-register tank(s) with Mass DEP; The schedule for submittal of the annual Third Party UST Inspection Form will remain unchanged. All third party inspections must be completed by August 8, 2010. If a new tank is installed or removed, obtain the required permits and approvals from your local Fire Department; Requirements for decommissioning a tank remain unchanged, with the exception that a “Notification for Removal or Closure of In-Place USTs Regulated Under 627 CMR 9.00” (DFS Form FP-290R) will need to be mailed to MassDEP rather than Department of Fire Services; and report leaking tanks to**

MassDEP's Bureau of Waste Site Cleanup in accordance with the Massachusetts Contingency Plan (310 CMR 40.0000).

- (d) Tanks shall be maintained in accordance with the most stringent requirements of the State Board of Regulation, and the National Fire Code of the National Fire Protection Association.**
- (e) Any unused underground storage tanks shall be removed under the direction of the Fire Chief or within six months of its non-use. The owner shall notify the Board of Health, Hazardous Waste Coordinator, and Fire Chief in writing of his intention to remove the unused tank.**

9.5.3 The following regulations apply to all underground toxic or hazardous material storage systems.

- (a) Any spill or loss of contents must be reported immediately to the Fire Department.**
- (b) All leaking tanks must be emptied within twelve hours of leak detection and removed in a time period to be determined by the Fire Chief and the Board of Health.**

SECTION 9.6 MANURE STORAGE AND APPLICATION AND OTHER AGRICULTURAL ACTIVITIES

9.6.1 Distribution, storage, accidental spillage or application of fertilizers, pesticides or herbicides shall be minimized and in accordance with the Best Management Practices for these activities as recommended by the U.S.D.A. Soil Conservation Service and Agricultural Stabilization and Conservation Service.

9.6.2 Manure storage sites shall:

- (a) have a roof which prevents precipitation from coming into contact with the manure,**
- (b) have a liquid-tight floor with no liquid drainage permitted and**
- (c) be located such that surface water run-off drains away from the storage area.**

9.6.3 Manure and fertilizer spreading application shall be consistent with, not substantially in excess of, the nitrogen uptake by the vegetation.

SECTION 9.7 PROHIBITIONS OF FLOOR DRAINS

9.7.1 With the exception of discharges that have received (or have applied and will receive) a Department issued permit prior to the effective date of this regulation, no floor drain(s) in a Zone II or Aquifer Protection District shall be allowed to discharge, with or without pretreatment (such as an oil/water separator), to the ground, a leaching structure, or septic system. For the purposes of this regulation, floor drain shall mean any intended drainage point on a floor constructed to be otherwise impervious which serves as the point of entry into any subsurface drainage, treatment, disposal, containment, or other plumbing system which discharges to the ground, a leaching structure, or a septic system.

9.7.2 REQUIREMENTS FOR EXISTING FACILITIES

A. The owner of a facility in operation prior to the effective date of this regulation with a prohibited floor drain system shall:

- (1)**Where possible, disconnect and plug all applicable inlets to and outlets from applicable leaching structures, oil/water separators, and/or septic systems;
- (2)**Remove all existing sludge in oil/water separators, septic systems, and where accessible, leaching structures. Any sludge determined to be a hazardous waste shall be disposed of in accordance with state hazardous waste regulations, 310 CMR 30.000. Remedial activity involving any excavation and/or soil or groundwater sampling must be performed in accordance with appropriate Massachusetts DEP policies;
- (3)**Alter the floor drain system so that the floor drain shall be either:
 - (a)** connected to a holding tank that meets all applicable requirements of Massachusetts DEP policies and regulations, with hauling records submitted to the Board of Health at the time of hauling;
 - (b)**connected to a municipal sanitary sewer line, if available, with all applicable Massachusetts DEP and local permits; or
 - (c)**permanently sealed. {Any facility sealing a drain shall be required to submit for approval to the Board of Health a hazardous waste management plan detailing the means of collecting, storing, and disposing any hazardous waste generated by the facility, including any spill or other discharge of hazardous materials or wastes. }

B. Any oil/water separator remaining in use shall be monitored weekly, cleaned not less

than every 90 days, and restored to proper conditions after cleaning so as to ensure proper functioning. Records of the hauling of the removed contents of the separator shall be submitted to the Board of Health at the time of hauling.

C. Compliance with all provisions of this regulation must be accomplished in a manner consistent with the Massachusetts Plumbing, Building and Fire code(s).

D. Upon complying with one of the options listed under Section 9.7.2, the owner/operator of the facility shall notify the Massachusetts DEP of the closure by filing the Massachusetts DEP's UIC pre-Closure Form BRP WS-06d (which may be obtained by calling 617-292-5770) with the Massachusetts DEP, and sending a copy to the Board of Health.

9.7.3 EFFECTIVE DATES FOR ALL FACILITIES

The effective date of this regulation is the date posted on the front page of the regulation, which shall be identical to the date of adoption of the regulation.

A. Existing Facilities:

- 1. Owners/Operators of a facility affected by this regulation shall comply with all of its provisions within 120 days of the effective date;**
- 2. All applicable discharges to the leaching structures and septic systems shall be discontinued immediately through temporary isolation or sealing of the floor drain.**

B. New Facilities:

- 1. As of the effective date of the regulation, all new construction and/or applicable change of use within the Town of Needham shall comply with the provisions of this regulation.**
- 2. Certification of conformance with the provisions of this regulation by the Board of Health shall be required prior to issuance of construction and occupancy permits.**
- 3. The use of any new oil/water separator shall comply with the same requirements as for existing systems.**

SECTION 9.7.4 PENALTIES

Failure to comply with provisions of this regulation will result in the levy of fines of not less than \$ 200.00, but no more than \$1000.00. Each day's failure to comply with the provisions of this regulation shall constitute a separate violation.

SECTION 9.7.5 VARIANCES

Variances from these regulations may be granted by the Board of Health after a hearing at which the applicant established that the proposed departure from these regulations will not adversely affect water resources used or potentially used as public water supplies.

AMENDMENTS Sections 9.5 and 9.7 voted May 11, 2010

ARTICLE 10

Hospice Permit Regulations

SECTION 10.1 AUTHORITY

The Board of Health adopts the following regulations under the provisions of Massachusetts General Laws (M.G.L.), Chapter 111, Section 31.

SECTION 10.2 RATIONALE/PURPOSE

This regulation applies to any residential hospice house operating in the Town of Needham. It is designed to protect the safety of residents and the environment by ensuring compliance with health and safety procedures relating to the handling, storage, and disposal of medical waste, as listed in Section 12.4.1, Permit Requirements, of this regulation.

SECTION 10.3 DEFINITIONS As used in this regulation:

RESIDENTIAL HOSPICE HOUSE: any residential dwelling in which care is given to five (5) or more terminally ill patients who have medically documented prognoses of less than six (6)

months to live.

SECTION 10.4 PERMIT

No residential hospice house shall operate in the Town of Needham without first receiving a permit issued by the Needham Board of Health. The permit shall be issued subject to the requirements of 12.4.1 and shall be renewed each year by January 1.

SECTION 10.4.1 PERMIT REQUIREMENTS

Prior to issuance of the initial permit the Board of Health shall conduct an inspection and review records to ensure that the residential hospice house:

a) Owner/operator is licensed to provide hospice care by the State of Massachusetts, under 105 CMR 141.001, Licensure of Hospice Programs.

B) Complies with all requirements for handling and disposing of “sharp”, “blood and blood products”, and “dialysis wastes” as defined in 105 CMR 480.000--Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste; State Sanitary Code Chapter VIII. The applicable sections of 105 CMR 480.000 are: 105 CMR 480.100 (A) through (F); 105 CMR 480.200 (A) , (B) , and (C) ; 105 CMR 480.300 (A) and (B); 105 CMR 480.500 (A) through (F) , and 105 CMR 480.600 (A) through (G) .

SECTION 10.4.2 INSPECTIONS

A residential hospice house shall be inspected biannually by the Board of Health to ensure compliance with the permit requirements.

SECTION 10.4.3 FEES

The Board of Health shall charge a fee for a permit to operate a residential hospice house of one hundred (100) dollars per year.

SECTION 10.5 PENALTIES/ENFORCEMENT

Any operator/owner of a residential hospice house who shall violate any provision of these rules and regulations or operates a residential hospice house without a permit from the Board of Health may be punished by a fine of not less than twenty five (25) dollars or more than one hundred (100) per day of violation.

SECTION 10.6 SEVERABILITY

Each provision of these regulations shall stand alone. Should any section of these rules be deemed invalid for any reason, the remaining provisions shall remain in full force and effect.

SECTION 10.7 EFFECTIVE DATE

This regulation shall take effect after publication of a summary of the regulation in a newspaper published in the Town of Needham. As required by Massachusetts General Laws, Chapter 111, Section 31, an attested copy has been

filed with the Department of Environmental Protection. A public hearing regarding this regulation was held on 07/20/93. This regulation was voted by a majority of this Board on 07/20/93.

ARTICLE 11

Biotechnology Registration Regulation

Section 11.1 **Authority**

The Needham Board of Health, pursuant to the authority granted under Massachusetts General Laws Chapter 111 section 31 hereby adopts the following regulation to protect the-public health of the communit_

Section 11.2 **Purpose**

The Needham Board of Health recognizes that the use of modern biological techniques for industrial purposes do not pose unique risks to public health or the environment when the activities are conducted in accordance with accepted best scientific practice. However, following the recommendations of the Needham Biotechnology Committee, it is the opinion of the Board of Health that the existing regulatory structure in the Town of Needham is not sufficient to ensure that Town officials would be alerted to the presence of biotechnology companies in theTown

The assessment of potential health risks is one of the primary roles and responsibilities of a public health agency.

Accordingly, the Board of Health declares that the purpose of this regulation is to require registration of biotechnology companies, to enable the Board of Health and other town officials to better assess and monitor potential fire and other hazards posed by flammable chemicals and hazardous materials.

Section 11.3 **Definitions**

Board: The Board of Health or its agent or designee.

Biotechnology: The use of modern biological techniques for industrial or research purposes.

The term Biotechnology shall include any industrial or research activities which use recombinant DNA molecules (rDNA) or organisms and viruses containing rDNA.

Director: The Director for the Needham Board of Health or designee.

Guidelines: 1) National Institutes of Health (NIH) Guidelines for Research involving Recombinant DNA molecules as published in the Federal Register of April 27, 1995.
2) Any amendments, revisions or substitutions enacted subsequent to the above-referenced “Guidelines”.

Institution: A single individual, group of individuals, association, organization, corporation educational institution, or medical facility conducting rDNA research, rDNA development, rDNA production, or biological material therapies or diagnostics.

Recombinant DNA Molecules (rDNA):
As defined in the NIH “Guidelines,” as defined above.

Substantive Change:
Any change in hazard designation as identified in the NIH Guidelines.

Section 11.4 Laboratory Registration Required

- 11.4.1. All institutions proposing any use of rDNA technology, as defined in and not exempted by the NIH Guidelines, which seeks to operate in the Town of Needham must first register with the Needham Board of Health before engaging in any rDNA activity, including construction or renovation of facilities for rDNA use(s).
- 11.4.2. The institution shall:
1. Register using a form approved by the Board of Health.
 2. Renew and update the registration annually.
 3. Submit copies of all registration materials to the Building Department, Fire Department, Emergency Management Department and the Planning Board.
 4. Allow inspections, at reasonable times, of both the institution’s facilities and records, as related to these regulations.
- 11.4.3. Pre-existing Institutions shall have 90 days from adoption of these regulations to register with the Board.

Section 13.5 Registration

11.5.1. In order to register, the following information must be submitted, using an application form approved by the board, to the Board of Health:

1. Name of institution.
2. Address, telephone, and fax number.
3. Names and telephone numbers of persons designated to be contacted on a 24-hour a day basis in case of an emergency.
4. A plot plan showing the proposed location of the facility and a floor plan showing the internal layout of the facility(s).
5. General statement of the company's intended area of research.
6. General statement of the types of hazardous, biohazardous, infectious or radioactive materials expected to be used in the facility.
7. Evidence of certification, as necessary, from the Massachusetts Department of Environmental Protection and the Massachusetts Department of Public Health.

11.5.2. In order to register, the following information must be submitted to the Board of Health, on a form which is approved by the Board of Health:

1. The chief executive officer must certify that the company adheres to the NIH Guidelines for Recombinant DNA Research.

11.5.3 Fees: The fee for registration shall be as designated in Article 17 of the Board of Health Regulations, Permit, License and other Fees.

Section 11.6 Renewal of Registration

11.6.1 The registration shall be valid for one year.

11.6.2 All companies registered with the Board of Health must renew their registration within thirty (30) days of the expiration of the registration.

11.6.3 The Board of Health must be notified of any substantive changes in operation at least thirty (30) prior to the change.

Section 11.7 Variances

11.7.1 The Board may vary the application of any provision of these regulations, with respect to any particular case when, its opinion, the enforcement thereof would do manifest injustice or conflict with the spirit of any minimum standard established by these regulations. Any variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Town Clerk, or in the office of the Board of Health.

Section 11.8 Enforcement and Penalties

11.8.1 Any person who violates the terms of these regulations shall be subject to a fine of five hundred dollars \$500 per offense. Each day shall constitute a separate offense.

11.8.2 Violations of this regulation and penalties listed in Section 8.a. may be subject to non-criminal disposition, M.G.L. Chapter 40, Section 21D, and Town of Needham, General By-Laws, July 1996 compilation, Section 9.2.2.6, Board of Health Regulations, and as amended. Each day that the offense continues shall constitute a separate offense.

11.8.3 These regulations may be enforced by the Town of Needham: Board of Health director or his designee, the Fire Chief or his designee, or by the Building Inspector or his designee.

Section 11.9 Severability

In the event any section, subsection or provision of the regulations are held to be invalid, it shall not effect the validity of any other section, subsection or provision thereof.

Section 11.10 Effective Date

This regulation shall take effect after publication of a summary of the regulation in a newspaper published in the Town of Needham. As required by Massachusetts General Laws, Chapter 111, Section 31, an attested copy has been filed with the Department of Environmental Protection. A public hearing regarding this regulation was held on 07/20/93. This regulation was voted by a majority of the board on 07/20/93.

Article 12

RULES AND REGULATIONS FOR THE REGISTRATION AND CONSTRUCTION OF PRIVATE WATER SUPPLIES

The Town of Needham Board of Health hereby orders that the following regulations be and are hereby adopted this April 21, 1998 under authority of M.G.L. Chapter 111 Section 31 of the General Laws of the Commonwealth of Massachusetts.

SECTION 12.1. PURPOSE

12.1.1 The Town of Needham Board of Health (hereinafter called the Board of Health) seeks to assure that private water supplies be developed and installed so as not to contaminate the municipal water supply system, to protect aquifers within the Town and to assure that any potable well meets the requirements of the Massachusetts Drinking Water Regulations. The Board of Health also seeks to identify the location of all irrigation wells which may draw from, or alter the flow of, areas of current or future groundwater contamination.

SECTION 12.2. APPROVAL OF SITE

12.2.1 The applicant, who shall be the owner of the property where the well is located or his/her authorized agent, shall submit a plan to the Board of Health showing the location of the proposed well. Said plan shall show all lot lines, structure locations, including septic systems and underground storage tanks, roadways, drains and sewer lines, along with distances to the proposed well. The plan shall be drawn on a scale of approximately one inch equals forty feet. An application, provided by the Board of Health, shall accompany the plan.

12.2.2 The Board of Health shall review the plan within ten working days of its receipt. If the Board of Health approves the plan, it shall issue a well permit. If it disapproves, it shall notify the applicant, in writing.

12.2.3 A well may not be installed until a well permit has been received from the Board of Health.

12.2.4 The Board of Health may charge a reasonable well permit fee.

12.2.5 The well permit shall expire if a well is not installed within twelve months.

SECTION 12.3. REGISTRATION REQUIREMENT

12.3.1 Any person installing a well by digging, driving, jetting, drilling or any other method shall be registered with the Massachusetts Water Resources Commission, as required by Massachusetts General Laws, Chapter 21, Section 16, and 313 CMR 3.00.

12.3.3 The owner of any existing potable or irrigation well or his/her agent shall register the well with the Board of Health on a form provided by the Board of Health. Failure to register the potable or irrigation well with the Board of Health shall be considered a violation of this

regulation.

12.3.4 The Board of Health may charge a reasonable fee for the registration of any existing potable or irrigation well.

SECTION 12.4. PLUMBING AND CROSS CONNECTIONS

12.4.1 No private potable well, or its associated distribution system, shall be connected to the distribution system of the Town of Needham water supply system.

12.4.2 Plumbing connected to any private well used for irrigation purposes shall not enter any building served by the Needham water system.

SECTION 12.5. LOCATION

12.5.1 Wells shall be located the following minimum distances from sources of contamination:

(a) property lines	5 feet
(b) roadways	25 feet
(c) leaching facilities	100 feet
(d) septic or pump tanks	50 feet
(e) underground storage tanks	100 feet
(f) building or public sewers	50 feet *
(g) subsurface drains	25 feet *

*10 feet if well constructed of durable, corrosion-resistant material with watertight joints.

12.5.2 In any particular case, the BOH may increase the above distances when it decides that specific conditions justify such an increase.

SECTION 12.6. USE AS A POTABLE WATER SUPPLY

12.6.1 No individual well of any type intended for use as a potable water supply shall be installed where a municipal supply of water is accessible abutting the property and where permission to connect to such a supply can be obtained from the authority having jurisdiction over it.

12.6.2 Any private well used as a source of potable water shall meet or exceed the chemical and bacteriological requirements of the Massachusetts Drinking Water Regulations (310 CAR 22.00)

Sections 22.05 through 22.08 inclusive. The water shall be analyzed by a state certified laboratory at the owner's expense, and a copy of the results submitted to the Board of Health at least seven days prior to the use of the supply. Thereafter, it is recommended that the well be tested annually for coliform bacteria.

12.6.3 Water drawn from a private well shall not be used as swimming pool water unless it meets the requirements of Section 6.2 above.

SECTION 12.7. IRRIGATION WELLS

12.7.1 Irrigation wells are for the sole purpose of irrigation and shall not be deemed or used as a potable supply for human consumption. Irrigation wells shall not be connected to a dwelling. There shall be no cross connection between the irrigation well and domestic supply.

12.7.2 Any tap, spigot or other faucet device connected to a private well shall be protected from use for drinking or other non-irrigation purposes and shall have a permanent, legible sign stating "DO NOT DRINK, FOR IRRIGATION ONLY."

SECTION 12.8. ABANDONMENT OF WELLS

12.8.1 A well which has not been used for two consecutive calendar years shall be considered abandoned. The owner of record of such well shall notify the Board of Health in writing that the well is abandoned and shall seal the well with materials which are approved by and in a manner satisfactory to the Board of Health.

SECTION 12.9. PENALTY

12.9.1 The penalty for violation of any provision of these regulations shall be a fine of not more than five hundred dollars (\$500). Each day's failure to comply with an order from the Board of Health shall constitute a separate violation of these regulations.

12.9.2 Violations of this regulation and penalties listed in Section 8.1 may be subject to non criminal disposition, M.G.L. Chapter 40, Section 21D, and Town of Needham General Bylaws, July 1996 Compilation, Article 9, Sections 9.1 and 9.2, and as amended.

SECTION 12.10. VARIANCES

12.10.1 Variances to these regulations may be granted by the Board of Health, if in their opinion strict compliance with these regulations would do manifest injustice and the applicant proves that the same degree of protection as required under these regulations can be achieved with the

variance.

12.10.2 All requests for variances shall be in writing.

12.10.3 Written notice of the decision of the Board of Health shall be given within ten working days of the hearing.

12.11 TESTING

12.11.1 The Board of Health may require that testing of irrigation wells for fecal and total coliform and heavy metals be conducted at the landowners expense after the well is approved and installed and at times the Board of Health feels a health hazard exists or the property on which the well is located changes ownership.

SECTION 12.11. SEVERABILITY

12.11.1 Should any provision of these regulations be ruled invalid by a competent authority, the remaining provisions shall be considered severable and remain in full force and effect.

SECTION 12.12. DISCLAIMER

12.12.1 The issuance of a well permit shall not be construed as a representation by the Board of Health or its agents that the water system will function satisfactorily, nor that the water supply will be of sufficient quality or quantity for its intended use.

SECTION 12.13. OTHER PERMITS

12.13.1 Applicants for well permits may be required to obtain plumbing and/or building permits from the Town of Needham Building Department for further guidance.

SECTION 12.14. EFFECTIVE DATE

12.14.1 These regulations become effective immediately after publication in a local news paper.

Approved by Needham Board of Health April 21, 1998

Published in Needham Times on May 14, 1998

Article 13 Mercury Disposal Regulations

Section I: Authority and Purpose

These regulations shall be effective on or after June 19, 2003 and shall remain in effect until modified or amended by the Needham Board of Health. They are enacted under the authority of Massachusetts General Laws Chapter 111, Section 31. Board of Health regulations are an exercise of power under which levels of government are responsible for protection of public health, safety, welfare and the environment.

These regulations of the Needham Board of Health have been enacted for the purpose of protection of the citizens of the town of Needham by reducing the amount of mercury entering the environment via the disposal of solid waste. Mercury is toxic to the human nervous system, as well as fish and animals. Mercury can enter the body through skin absorption, inhalation of mercury vapors, or ingestion of food which is contaminated with mercury.

These regulations are made to prevent mercury from mercury containing devices from entering the environment.

Thermostats, thermometers, switches, fluorescent tubes, and other mercury containing devices contain several grams of mercury in fragile glass bulbs or ampoules. These ampoules may break, releasing droplets of toxic mercury.

Section II: Definitions

Individuals – Person or persons that are removing or replacing any mercury-containing device from a property. The individual may be the property owner or hired contractor such as, but not limited to, a carpenter, plumber or electrician. This does not apply to town staff who are operating in the performance of their duties.

Mercury Device – Any product that contains the element mercury. These common products include but are not limited to thermostats, fluorescent bulbs, switches, barometers, sphygmomanometers, button cell batteries and thermometers.

Building – This definition includes residential, commercial, industrial or recreational buildings or facilities.

Section III: Regulations

- 1. Mercury devices shall not be disposed of through any waste stream that results in their incineration, landfilling, discharge into the general environment or any other method of disposal not approved by the Department of Environmental Protection and local Board of Health.**
- 2. It shall be the responsibility of the individual(s) removing or replacing such mercury devices to properly dispose of this mercury device in accordance with these regulations and any state regulation regarding proper mercury disposal.**
- 3. Used devices containing mercury must be disposed of through an approved Massachusetts Department of Environmental Protection (DEP) collection and disposal program. Approved programs shall, at a minimum, document how they will accept, store, recycle**

and/or transfer each mercury device. In addition, the programs yearly approval will be contingent on providing evidence to the Board of Health, through properly documented manifests, that all devices have been disposed of in accordance with Massachusetts DEP's Universal Waste Regulations.

Section IV: Effective Date and Enforcement

The effective date of this regulation is the date posted on the front page of this regulation, which shall be identical to the date of adoption of these regulations.

1. As of the effective date of this regulation, any individual that removes, replaces, or engages any activity that would result in the removal or replacement of a mercury device shall comply with the provisions of this regulation.
2. The Building Department or any other department that would oversee the removal, replacement or installation of mercury devices must notify the individual removing, replacing or installing the mercury device, of these regulations and notify the Board of Health upon issuance of a permit to do so.

Section V: Penalties

Failure to comply with provisions of these regulations will result in a levy of fines no less than \$100, but no more than \$300 per incident by the Board of Health.

Section VI: Severability

Each provision of this regulation shall be constructed as separate to the end that if any provision, sentence, clause, or phase thereof, shall be held invalid for any reason, that remainder of that section and all other sections shall continue in full force and effect.

Effective Date: June 19, 2003 by vote of the Needham Board of Health.
Published in the Needham Times July 3, 2003

ARTICLE 14

REGULATION FOR OUTSIDE CONSULTANT FEES

Under section 31 of Chapter 111and section 53G of Chapter 44 of the Massachusetts General Laws, the Needham Board of Health sets forth the following regulations to provide for fees for the employment of outside consultants.

1. When reviewing an application for approval, the Board and/or Director of the Health Department may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. The Board and/or Director may require that the applicants pay an "outside consultant fee" consisting of the reasonable costs incurred by the Board and/or Director to assist in the review of an application.
2. In hiring outside consultants, the Board and/or Director may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board

and/or Director in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws, and regulations.

3. Funds received by the Board and/or Director pursuant to this regulation shall be deposited with the municipal treasurer who shall establish a special account for this purpose in accordance with the provisions of G.L. c.44, section 53G. Expenditures from this special account may be made at the direction of the Board and/or Director without further appropriation. Expenditures from this special account shall be made only in connection with the review of a special project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the application.

4. Outside consultant fees may only be spent for services rendered in connection with the specific project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board and/or Director's review of a project, any excess amount in the account, including interest, attributable to the project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be the applicant's successor in interest shall provide the Board and/or Director with the documentation establishing such succession in interest.

5. The Board and/or Director shall determine whether one or more outside consultants will be necessary in order for the Board and/or Director to make a fully informed decision on the selection of the outside consultant(s), which notice shall state the identity of the consultant(s), the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date the notice is given.

6. The fee must be received in its entirety prior to the institution of consulting services. The Board and/or Director may request additional consultant fees if the necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board and/or Director within ten (10) business days of the request for payment shall be cause for the Board and/or Director to deny the application.

7. Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board and/or Director shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the appeal, the selection made by the Board and/or Director shall stand.

Edward Cosgrove, Chairperson
Denise Garlick, Vice-Chairperson
Alan Stern, Member

ARTICLE 15

SEPARABILITY CLAUSE

SECTION 15.1

So far as the Needham Board of Health may provide, each section of its rules and regulations shall be construed as separate to the end that if any section, sentence, clause or phrase shall be held invalid for any reason, the remainder of the rules and regulations shall continue in full force.

ARTICLE 16

PENALTY CLAUSE

SECTION 16.1

Whoever violates any of the rules and regulations of the Needham Board of Health, shall forfeit a sum not exceeding one hundred dollars unless specifically stated in the regulation or as listed in the Town of Needham General By-Laws, Board of Health Regulations, Section 9.2.2.6.

Section 16.2 Non Criminal Disposition

Any person violating any provision of these regulations, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided in M.G.L. Chapter 40, Section 21D, and as listed in the Town of Needham General By-Laws, Board of Health Regulations, Section 9.2.2.6.

NEEDHAM BOARD OF HEALTH
A REGULATION TO RESTRICT FOODS CONTAINING
ARTIFICIAL TRANS FAT IN THE TOWN OF NEEDHAM
Article 17

WHEREAS, heart disease is a leading cause of death in the United States;

WHEREAS, research concludes that there is no safe level of artificial trans fat consumption and there is a clear association between an increase in the intake of trans fat and the risk of heart disease;

WHEREAS, the major source of artificial trans fat is found in partially hydrogenated vegetable oil, which is used for frying and baking and is present in many processed foods;

WHEREAS, there are food service establishments and other food vendors in the Town of Needham that prepare and serve food containing artificial trans fat for consumption by Needham residents, visitors and students;

NOW THEREFORE, the Needham Board of Health enacts the following regulation in furtherance of its mission to protect, promote and preserve the health and well-being of the citizens of Needham.

Section 1.00 Definitions

“artificial trans fat” - food or beverage that is manufactured through a chemical process and contains artificial fat. It is found in partially hydrogenated vegetable oil. Some of the foods that contain artificial fat include margarines, shortenings, and fry oils, as well as many baked goods, mixes and prepackaged foods.

“food service establishment” - any entity that stores, prepares, packages, serves, sells or otherwise provides food or beverage for consumption in the Town of Needham. Food service establishment includes, but shall not be limited to, restaurants, supermarkets, grocery stores, delis, sandwich shops, bakeries, convenience stores, ice cream shops, coffee shops, cafeterias in schools and businesses, caterers, senior-center meal programs, nursing homes, children’s institutions, school kitchens, school stores, soup kitchens and permanent or temporary concession stands. Food service establishment shall not include a fraternal, charitable, social, service club or similar organization that prepares, displays and sells home-made baked goods for a “bake sale” so called.

“entity” - any single individual, group of individuals, corporation, partnership, hospital, academic institution, society, association, firm, sole proprietorship or any other legal entity whether public or private.

“vending machine” - any machine or device designated for or used for the vending of food products or beverages upon the insertion of coins, currency, swipe cards, or any

other form of payment.

“mobile food vendor” - any person or operation that sells food or beverage from a mobile food unit. A mobile food vendor shall include, but not be limited to, sidewalk vendors, canteen trucks, and food trailers.

“serving”- based on the amount of a product normally eaten in one sitting or reference amounts, determined from nationwide food consumption surveys.

Section 2.00 Restriction on Artificial Trans Fat

No food service establishment, vending machine, or mobile food vendor shall store, prepare, distribute, hold for service or serve any food or beverage containing artificial trans fat in the Town of Needham.

Food or beverage whose nutrition fact label or other suitable documentation lists the trans fat content of the food as less than 0.5 grams per serving shall not be deemed to contain artificial trans fat.

These prohibitions shall not include the sale of any food or beverage containing artificial trans fat that is in a manufacturer’s original sealed package and is required by federal and or state law to have nutrition labeling.

Section 3.00 Labels Required

All food service establishments, mobile food vendors and operators of vending machines shall maintain on-site original labels or other suitable documentation listing the ingredient and nutrient content of all food products such that the Needham Health Department or its designees can determine whether they are in compliance with this regulation.

Section 4.00 Guidelines

The Needham Health Department shall issue guidelines for the implementation of this regulation, including but not limited to, definitions of terms as used in these regulations and in the guidelines. In the event of a conflict between these regulations and the guidelines, as either may be amended, the regulation shall control.

Section 5.00 Violations

1. A violator of these regulations and guidelines referred to in Section 4.00 shall be subject to a penalty for each offense as follows:
 - a. In the case of a first violation a fine of one hundred dollars (\$100.00);
 - b. In the case of a second violation within 24 months of the first violation a fine of five hundred dollars (\$500.00); and,

- c. In the case of a third or more violations within 24 months of the second or current violation, a fine of one thousand dollars (\$1000.00) for each violation.
2. No provision, clause or sentence of this section of this Article shall be interpreted as prohibiting the Needham Board of Health from suspending, or revoking any license or permit issued by it, for repeated violations of this Article.

Section 6.00 Enforcement

1. Authority to enforce this Article shall be held by the Needham Board of Health.
2. Any violation of this Article may be enforced in the manner provided in M.G.L. c.111 §187, by the Needham Board of Health, or its designees.

Section 7.00 Non-retaliation

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this Article or exercises any rights conferred by this Article.

Section 8.00 Severability

If any provision, clause, sentence, paragraph or word of this Article or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provisions or application and to this end the provisions of this Article are declared severable.

Section 9.00 Effective Date

This regulations contained in this Article shall take effect within 180 days from the date of adoption by the Needham Board of Health with respect to cooking oils, shortening, and margarines containing artificial trans fat and within 360 days with respect to baked goods and all other foods containing artificial trans fat.

Adopted March 10, 2009. Needham Times Legal Notices March 5, 2009, March 26, 2009, April 2, 2009

ARTICLE 18 REGULATION FOR EXCAVATION AND TRENCH SAFETY

**Supplemental Rules and Regulations to the State Environmental Code:
Title 5, 310 CMR 15.000 “Standard Requirements for the Siting, Construction, Inspection,
Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the
Transport and Disposal of Septage”**

18.01 Authority to Promulgate and Other Provisions.

(1) In accordance with the provisions of 310 CMR 15.003 (3) of the State Environmental Code and in accordance with M.G.L. c. 111, s. 31, and M.G.L. c. 21A, s.13, the Board of Health of the Town of Needham hereby adopts these Supplemental Rules and Regulations to the State Environmental Code: Title 5, 310 CMR 15.000 “Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage”.

(2) In accordance with 310 CMR 15.019 the Board of Health of the Town of Needham issues Disposal System Installer’s Permits. In addition to the requirements in 310 CMR 15.000 of the State Environmental Code and these Supplemental Rules and Regulations, Disposal System Installers shall comply with the provisions of 520 CMR 14.00 Excavation And Trench Safety of the Department of Public Safety in conjunction with the Division of Occupational Safety pursuant to authority granted by M.G.L. c. 82A § 1 and the Town of Needham General By-Laws, Section 2.2.5.4 and the “Street Permit Procedures & Regulations”.

(3) A trench permit from the Board of Health of the Town of Needham will be deemed issued upon issuance of a Disposal System Construction Permit.

(4) Whoever violates any provisions of these regulations shall be fined up to \$300 per offense for Trench Excavation violations. Each day such violation continues shall constitute a separate offense.

(5) Any person who continues to violate these regulations shall not be eligible to receive further Disposal System Construction Permits and is subject to revocation of his/her Disposal System Installer’s Permit until such time as the Town is satisfied that the person is complying with these regulations.

(6) The effective date of these Supplemental Rules and Regulations is September 14, 2010.

Voted September 14, 2010

